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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/369,517	08/06/99	TUCK	D ACONT. 0101C2

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 EXAMINER

COSIMANO, E

 ART UNIT PAPER NUMBER

2161

DATE MAILED: 07/05/01

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)
	09/369,517	TUCK ET AL.
	Examiner Edward R. Cosimano	Art Unit 2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.138 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2000.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 12-14 & 16-51 is/are pending in the application.
- 4a) Of the above claim(s) None is/are withdrawn from consideration.
- 5) Claim(s) 12-14 is/are allowed.
- 6) Claim(s) 16-26, 28-38 & 40-50 is/are rejected.
- 7) Claim(s) 27, 39 & 51 is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on 17 November 2000 is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) Z.
- 18) Interview Summary (PTO-413) Paper No(s) _____
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other: _____

1. Applicant should note the changes to patent practice and procedure effective December 01, 1997 as published in the Federal Register, Vol 62, No. 197, Friday October 10, 1997.

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

2.1 The oath or declaration is defective because:

A) Although it contains an address for each of the three inventors, the given address is not identified as either the Post Office address or Residence. Hence the declaration lacks the Post Office address and Residence of each of the inventors as required by 37 CFR § 1.63(a)(3).

3. The specification and drawings have not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification or drawings. Applicant should note the requirements of 37 CFR § 1.74, § 1.75, § 1.84(o,p(5)) & § 1.121(a)(1)-1.121(a)(6).

4. The following is a quotation of 35 U.S.C. § 103, which forms the basis for all obviousness rejections, set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

(c) Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Art Unit: 2161

4.1 Claims 16-26, 28-38 & 40-50 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either Starr et al (2,841,331) or Kleinbach et al (3,229,110) or Stadlin (3,400,258) or Couvreur (3,465,164) in view of either Fraser (5,644,115) or Silverman et al (5,924,082) or Mistr, Jr. (5,794,212).

4.1.1 In regard to claims 16-19, 21, 26, 28-32, 38, 40-44 & 50 any one of Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) disclose that it is common practice in the power generation and distribution business for companies that are:

A) producing power in excess of the company's needs to sell the excess power to surrounding power companies.

B) producing less power than the company's needs to buy the excess power to surrounding power companies.

To accomplish this buying and selling of power, a company would contact nearby power producers in regard to the availability of power, the condition of the transaction, and the associated cost of the power as well as the cost of the transmission of the power. Based on the collected data, the power company would make a decision to either:

- A) buy power; or
- B) sell power; or
- C) generate more power, if possible; or
- D) curtail a transaction in progress;

based on the economics of the current period so as to provide power to its customers at the least cost and to maximize profit. This process is equivalent to a process of auctioning power by collection bids/offers to buy or sell power and then accepting the offers.

4.1.2 However, neither Starr et al ('331) nor Kleinbach et al ('110) nor Stadlin ('258) nor Couvreur ('164) disclose that the participants in the above process of buying and selling power are connected to a database of power generation and distribution companies that are offering to buy/sell power. Whereas in the environment of buying and selling items, either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212) disclose a system that uses a centralized collection computer to accumulate a database of offers to sell and offers to buy an item. In these systems, buyers access the central database to enter data about an offer to buy an item

and to view and/or accept the offers to sell the item. Further, in these systems, sellers access the central database to enter data about offers to sell an item and view and/or accept the offers to buy the item. Where the systems of either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212) aid in the process of buying and selling item by increasing the speed of the transactions.

4.1.3 Since, the systems of either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212) would permit the power companies to accomplish the purpose of providing power to it's customers at the least cost and to maximize profit, it would have been obvious to one of ordinary skill at the time the invention was made that the trading systems of either Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) could be modified to be implemented on a computerized network so as to automate the process as taught by either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212). For as the Court has stated it is not invention to broadly replace manual activity with an automatic activity that accomplishes the same result, (In re Venner and Bowser, 120 U.S.P.Q. 192 @ 194 (CCPA, 1958)).

4.1.4 As per claims 20, 33 & 45, it is noted that in the environment of distributing power it would not be good business practice or beneficial to:

- A) overload the power distribution system, or
- B) sell power which can not be produced/spared by the seller, or
- C) buy power which is not needed,

it would have been obvious to one of ordinary skill at the time the invention was made to check the limits/reliability of the affected systems before making a transaction in the systems of either Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) as modified by either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212).

4.1.5 As per claims 22-24, 34-36 & 46-48, it is noted that in the environment of distributing power it would not be good business practice or beneficial to either a seller of power or a buyer of power to:

- A) sell power which can not be produced/spared by the seller, or
- B) buy power which is not needed,

it would have been obvious to one of ordinary skill at the time the invention was made to check the historical performance/reliability of the participating systems before making a transaction in the systems of either Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) as modified by either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212).

4.1.6 In regard to claims 25, 37 & 49, neither Starr et al ('331) nor Kleinbach et al ('110) nor Stadlin ('258) nor Couvreur ('164) use an electronic settlement process for making payments. However, either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212) in the environment of making payments for purchased items disclose the use of an electronic settlement. In the systems of either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212), the use of electronic settlement speeds the time required for a transaction to take pace. Since the sellers of power would want to be compensated for the amount of power sold as soon as possible, it would have been obvious to one of ordinary skill at the time invention was made that the participating systems buying and selling power in the systems of either Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) as modified to use electronic settlement as taught by either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212).

5. Response to applicant's arguments.

5.1 All rejections and objections of the previous Office action not repeated or modified and repeated here in have been over come by applicant's last response.

5.2 As per the 35 U.S.C. § 103(a) rejection, since:

- A) applicant is arguing unclaimed merits;
- B) applicant is arguing each reference in a void and not as applied by the examiner in the prior Office action;
- C) either Starr et al ('331) or Kleinbach et al ('110) or Stadlin ('258) or Couvreur ('164) clearly disclose that power system exchange energy based on economic considerations such as production and transmission costs, where a database offers/bids is required to perform these functions; and

D) either Fraser ('115) or Silverman et al ('082) or Mistr, Jr. ('212) an system which matched bids and offers and used electronic settlement for payment; applicant's argument's are non persuasive.

6. The following is an Examiner's Statement of Reasons for Allowance:

A) the prior art for example:

(1) either Starr et al (2,841,331) or Kleinbach et al (3,229,110) or Stadlin (3,400,258) or Couvreur (3,465,164) or Takriti (6,021,402) or Tuck (6,115,698) or Ku disclose the buying, selling and trading of electrical power among power companies; and

(2) either Fraser (5,644,115) or Silverman et al (5,924,082) or Mistr, Jr. (5,794,212) or Noguchi (JP 2000-148850) which disclose the matching of the offers to sell with offers to buy a commodity that includes the use of an electronic settlement system.

B) however in regard to claim 12, the prior art does not teach or suggest a method of selling electrical energy that includes establishing a data base of the next hour offers. Claims 13 & 14 are allowable for the same reason.

C) in regard to the subject matter of dependent claims 27, 39 & 51 the prior art does not teach or suggest minimizing the cost associated with transmission by determining a least cost transmission path from transaction conditions which include the capacity of transmission and the contractual agreements between buyers and sellers.

7. Claim 27, 39 & 51 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The prior art cited by applicant but not considered by the examiner has not been considered, since it was not cited in the parent application nor supplied by applicant.

9. The shorten statutory period of response is set to expire 3 (three) months from the mailing date of this Office action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Cosimano whose telephone number is (703) 305-9783. The examiner can normally be reached Monday through Thursday from 7:30am to 6:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell, can be reached on (703)-305-9768. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

10.1 The fax phone number for UNOFFICIAL FAXES or for OFFICIAL FAXES for this group is either (703) 308-9051 or (703) 308-9052.

06/21/01

Edward Cosimano
Edward R. Cosimano
Primary Examiner A.U. 2161